



Robert K. Malone  
Partner  
973-549-7080 Direct  
973-360-9831 Fax  
robert.malone@dbrr.com

*Law Offices*

500 Campus Drive  
Florham Park, NJ

07932-1047

973-549-7000 phone

973-360-9831 fax

www.drinkerbiddle.com

*A Delaware Limited  
Liability Partnership*

CALIFORNIA

DELAWARE

ILLINOIS

NEW JERSEY

NEW YORK

PENNSYLVANIA

WASHINGTON DC

WISCONSIN

December 21, 2011

**VIA FEDERAL EXPRESS/ELECTRONIC FILING**

The Honorable Joseph E. Irenas  
United States District Judge  
District of New Jersey  
Mitchell H. Cohen Building & U.S. Courthouse  
4th & Cooper Streets Room 1050  
Camden, NJ 08101

**Re: Michaelson v. Golden Gate Private Equity, Inc., et al.,  
Civ. No. 11-807 (JEI/KM) (D. Del.)**

Dear Judge Irenas:

We are co-counsel for Robert N. Michaelson, Trustee of the Appleseed's Litigation Trust and Plaintiff in the above-referenced proceeding. In light of the Court's recent entry of an order granting the FBK Defendants'<sup>1</sup> Motion to Withdraw the Reference, we write to apprise the Court of certain motions pending in the Adversary Proceeding commenced in the United States Bankruptcy Court for the District of Delaware, Case No. 11-51847 (the "Adversary Proceeding").

Each of the defendants have filed motions to dismiss the complaint (collectively, the "Motions to Dismiss") or have joined in the Motions to Dismiss. The Motions to Dismiss have been fully briefed, and the following pleadings have been filed in connection therewith:

- The FBK Defendant's motion to dismiss the complaint [D.I. 19] and brief in support thereof [D.I. 20];

Edward A. Gramigna, Jr.  
Partner responsible for  
Florham Park Office

<sup>1</sup> The "FBK Defendants" include the following defendants: Bradford J. Farmer, Brent Bostwick, Jeffrey D. Farmer, and Vito Kowalchuk.

DrinkerBiddle&Reath

The Honorable Joseph E. Irenas  
December 21, 2011  
Page 2

- The Golden Gate Defendants'<sup>2</sup> partial motion to dismiss the complaint [D.I. 21] and memorandum of law in support thereof [D.I. 22];
- Karinn Kelly's motion to dismiss the complaint and joinder to motions to dismiss filed by other defendants [D.I. 23];
- The Declaration of Sander Bak in Support of the Golden Gate Defendants' partial motion to dismiss the complaint [D.I. 24];
- The Webster Defendants'<sup>3</sup> partial motion to dismiss the complaint [D.I. 25];
- The Plaintiff's omnibus opposition to the defendants' motions to dismiss the complaint (the "Opposition Brief") [D.I. 31<sup>4</sup>];
- The Golden Gate Defendants' reply memorandum in support of their partial motion to dismiss [D.I. 26];
- The Webster Defendants' joinder to the reply memorandum of law in further support of the Golden Gate Defendants' partial motion to dismiss [D.I. 27];

---

<sup>2</sup> The "Golden Gate Defendants" include the following defendants: Defendants Golden Gate Private Equity, Inc.; Golden Gate Capital Management II, LLC; GGC Administration, LLC; Orchard Brands Corporation f/k/a Appleseed's Topco, Inc.; Orchard Brands Topco LLC; Catalog Holdings, LLC; Catalog Holdings, LLC – Series B (Draper's); Catalog Holdings, LLC – Series C (Appleseed's); Catalog Holdings, LLC – Series D (NTO); Catalog Holdings, LLC – Series E (Haband); Golden Gate Capital Investment Fund II, LP; Golden Gate Capital Investment Fund II (AI), LP; Golden Gate Capital Associates II-QP, LLC; Golden Gate Capital Associates II-AI, LLC; CCG AV, LLC; CCG AV, LLC – Series C (GGC Co-Invest); CCG AV, LLC – Series I (Bain); CCG AV, LLC – Series K (K&E); CCG AV, LLC – Series K; Joshua Olshansky; Stefan Kaluzny; Jim Brewster; and Geralynn Madonna.

<sup>3</sup> The "Webster Defendants" include the following defendants: Webster Capital Founders' Fund, LP; Webster II, LLC; and Webster III, LLC.

<sup>4</sup> Docket entry 31 is a redacted version of the Opposition Brief, as was filed on the docket in the Adversary Proceeding. Upon the request of the District Court Clerk, an unredacted copy of the Opposition Brief is enclosed with this letter. However, pursuant to the Order entered in the Adversary Proceeding authorizing the Plaintiff to file the Opposition Brief under seal [Adv. Pro. D.I. 87, filed on Oct. 5, 2011], that enclosure will not be included with the copy of this letter filed on the docket.

DrinkerBiddle&Reath

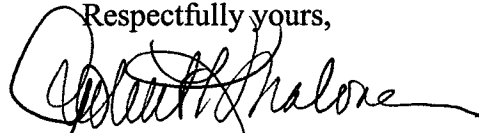
The Honorable Joseph E. Irenas  
December 21, 2011  
Page 3

- The FBK Defendants' reply brief in support of their motion to dismiss the complaint [D.I. 28];
- Karinn Kelly's reply in support of her motion to dismiss the complaint and joinder in the replies filed by the other defendants [D.I. 29]; and
- Charles Slaughter's joinder in the Golden Gate Defendants' partial motion to dismiss the complaint [D.I. 30].

Oral argument on the Motions to Dismiss was requested in the Adversary Proceeding by the Golden Gate Defendants [Adv. Pro. D.I. 93, filed on Oct. 17, 2011] and the FBK Defendants [Adv. Pro. D.I. 94, filed on Oct. 18, 2011]. The Plaintiff, by and through its undersigned counsel, hereby requests that this Court hear oral argument on the Motions to Dismiss.

Accordingly, we respectfully request that this Court schedule oral argument on the Motions to Dismiss on and after January 9, 2012, at the court's convenience.

Respectfully yours,



Robert K. Malone

RKM/dm

cc: (Without Enclosure)  
Robert N. Michaelson  
Richard S. Kanowitz (Cooley LLP)  
Jay R. Indyke (Cooley LLP)  
Earl M. Forte (Blank Rome LLP)  
Ian M. Comisky (Blank Rome LLP)  
Linda Dakin-Grimm (Milbank, Tweed, Hadley & McCloy LLP)  
Robert J. Moore (Milbank, Tweed, Hadley & McCloy LLP)  
David B. Zolin (Milbank, Tweed, Hadley & McCloy LLP)  
Sander Bak (Milbank, Tweed, Hadley & McCloy LLP)  
Michael J. Pappone (Goodwin Procter LLP)  
Andrew B. Levin (Goodwin Procter LLP)  
David M. Fournier (Pepper Hamilton LLP)  
Michael J. Custer (Pepper Hamilton LLP)  
Carl N. Kunz, III (Morris James LLP)  
Howard A. Cohen (Drinker Biddle & Reath LLP)  
Michael P. Pompeo (Drinker Biddle & Reath LLP)